

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)

Tariff Filing Requirements for)
Nondominant Common Carriers)CC Docket No. 93-36COMMENTS

BellSouth Telecommunications, Inc. ("BellSouth") hereby submits its comments in the above-captioned rulemaking proceeding.

In this proceeding, the Commission is proposing to establish streamlined tariff filing requirements for non-dominant carriers.¹ The rulemaking proceeding is in response to the recent Court of Appeals ruling² invalidating the Commission's permissive detariffing policies under which non-dominant carriers were relieved of the obligation to file tariffs for their services.³ The Commission is now

¹ Tariff Filing Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Notice of Proposed Rulemaking (FCC 93-103), released February 19, 1993 ("Order").

² AT&T v. FCC, No. 92-1053, slip op. (D.C. Cir. Nov. 13, 1992).

³ Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor (CC Docket No. 79-252) (Competitive Carrier), Notice of Inquiry and Proposed Rulemaking, 77 FCC 2d 308 (1979) (Competitive Carrier Notice); First Report and Order, 85 FCC 2d 1 (1980) (First Report); Further Notice of Proposed Rulemaking, 84 FCC 2d 445 (1981) (Competitive Carrier Further Notice); Second Further Notice of Proposed Rulemaking, FCC No. 82-187, 47 Fed. Reg. 17,308 (1982); Second Report and Order, 91 FCC 2d 59 (1982) (Second Report), recon., 93 FCC 2d 54 (1983); Third Further Notice of Proposed Rulemaking, 48 Fed. Reg. 28,292 (1983); Third

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proposing to adopt streamlined tariff filing requirements for non-dominant carriers. Specifically, the Commission is proposing to allow non-dominant carriers to file their tariffs on not less than one day's notice, to allow them to state the rates in such tariffs at either maximum levels or a range of rates, to allow filings to be made on floppy diskettes, and to permit a flexible format for such filings.

BellSouth supports the streamlining of tariff filing requirements, but opposes the Commission's proposal that it should be the status of a carrier, rather than the nature of the service involved, which determines whether the streamlined rules apply. The Commission, instead, should determine tariffing requirements based upon the nature of the service involved, and should apply its streamlined tariffing rules to services which are competitive.⁴ The reasoning upon which the Commission bases its proposal - to apply the new rules based upon classification of carrier -

³(...continued)

Report and Order, 48 Fed. Reg. 46,791 (1983); Fourth Report and Order, 95 FCC 2d 554 (1983) (Fourth Report), vacated, AT&T v. FCC, 978 F.2d 727 (D.C. Cir. 1992), rehearing en banc denied, January 21, 1993; Fourth Further Notice of Proposed Rulemaking, 96 FCC 2d 922 (1984); Fifth Report and Order, 98 FCC 2d 1191 (1984) (Fifth Report), recon., 59 Rad. Reg. 2d (P&F) 543 (1985); Sixth Report and Order, 99 FCC 2d 1020 (1985) (Sixth Report), rev'd MCI Telecommunications Corp. v. FCC, 765 F.2d 1186 (D.C. Cir. 1985) (MCI v. FCC).

⁴ The Commission has recognized that a competitive service analysis approach is appropriate for interexchange business services. See, Competition in the Interstate Interexchange Marketplace, Competition in the Interstate Interchange Marketplace, CC Docket No. 90-132, Report and Order, 69 Rad. Reg. 2d (P&F) 1135, 1991, paras. 8-9.

is faulty in two regards. First, the Commission places undue emphasis upon the impact which a relaxation of filing requirements has upon the emergence and growth of competition. Second, the Commission ignores the fact that the very reasons it has articulated in support of its specific proposals for streamlined regulation apply to any carrier, whether dominant or non-dominant, where competitive services are involved.

As to the impact of permissive detariffing on competition, the Commission states as follows:

Actual experience during a decade of permissive detariffing helps confirm that the Commission's permissive detariffing policy has played a substantial role in the development of competition in the interexchange market and the increased choices for customers with respect to carriers and prices.⁵

With respect to competition in the interstate access arena, the Commission summarily states:

The development of competition in the provision of interstate access services has also benefitted from the lack of tariff regulations.⁶

BellSouth does not dispute the fact that interexchange and access competition have grown over the years. BellSouth does dispute, however, that the cause, or substantial cause, of such growth, has been the Commission's permissive detariffing policies. In fact, the Commission has not even attempted to provide support for this assertion.

⁵ Order, para. 10.

⁶ Order, para. 11.

With respect to the development and growth of access competition, for instance, factors other than tariffing requirements have had far more extensive an impact than the Commission's detariffing policies. The availability of new technology at affordable cost, in particular fiber optics (as the Commission observes), has made it much more attractive for competitive access providers to invest in the facilities and technology needed in order to provide alternatives to access services provided by LECs. With the advent of expanded interconnection arrangements and the switched transport restructure, competition from competitive access providers will increase at an unprecedented rate. More importantly, with expanded interconnection interexchange carriers, which already have substantial networks deployed, will be able to provide their own access to the points of interconnection and will constitute formidable additional competitors in the access environment. Thus, the Commission has an over-inflated view of the role which detariffing has played and will play in the growth of competition to traditional service providers.

The Commission's reasoning is faulty also with respect to its rationale for limiting the specific rule changes to non-dominant carriers. For instance, the Commission supports its proposal for one-day notice filings for non-dominant carriers on the basis that longer notice periods allow[] competitors time to begin, and possibly complete, development and implementation of a market

response before the tariff becomes effective. As such, the notice period delays the benefits customers receive from new offerings, and discourages carriers from taking pro-consumer actions.⁷

The Commission states that its power to investigate tariff filings after a tariff becomes effective as well as the Section 208 complaint processes provide adequate avenues of relief in the event that a given tariff filing is unlawful.⁸

If these conclusions are true with respect to non-dominant carriers' tariff filings, then they are no less true with respect to the tariff filings of other carriers where the service at issue is a competitive one. Clearly, when a LEC is required to file its new service and restructured service offerings on 45 days notice, as is the case under the existing rules for Price Cap-regulated LECs, this notice period not only provides competitors with more than ample opportunity to develop a response, but it also delays the LECs' ability to introduce the service to the marketplace. When this notice period is coupled with a deferral of the tariff filing, or a suspension, as is authorized under the present rules, the inequity is aggravated even further. This occurs despite the fact that the Commissions' ability to investigate tariff filings after they have become effective, and the availability of complaint proceedings after a service has been introduced to

⁷ Order, para. 15.

⁸ Order, para. 16.

the marketplace, provide ample opportunity for a determination of the lawfulness of the filing and determination of any appropriate relief. Given the adequacy of such rules, the Commission should apply its one day notice filing rule to all carriers competing to provide services which are competitive services.

A similar mis-match between the Commission's reasoning in support of its proposals and its conclusion to limit the applicability of its proposals to non-dominant carriers is evident with respect to the Commission's proposals regarding "tariff content." The proposed rule would require non-dominant carriers to include with their tariff filings merely a maximum of the rates which will be charged for a service, or a range of rates to be charged.⁹ The Commission supports this proposal on the basis that "existing tariff filing requirements are unnecessary for, and burdensome on, nondominant carriers....," and this proposal "would lessen the potential for tacit collusion among carriers by withholding from competitors the exact rate being charged by competitors at any given time."¹⁰

This rationale simply does not support a limited applicability of the streamlined rule to nondominant carriers. If the existing tariff filing requirements are burdensome on nondominant carriers, they are equally as

⁹ Order, paras. 21-22.

¹⁰ Order, para. 22.

burdensome on others. Moreover, if there is a potential for collusion regarding rates, then this potential exists regardless of the classification of carriers involved. Where a service is a competitive service, then similar streamlined filing requirements should be applied to all carriers competing to provide that service.

The Commission's rationale for applying streamlined rules to nondominant carriers with regard to "tariff form requirements" is circuitous and without support. The Commission states that existing rules, which require detailed tariff support materials to be provided, in specified format, are justified for dominant carriers "which are subject to relatively stringent tariff review" but may not be justified for nondominant carriers "whose tariffs do not require stringent review."¹¹ This misses the point. The Commission assumes, without discussion or support, that all services provided by a dominant carriers "require stringent review." Presumably, the Commission somehow perceives that the filings of dominant carriers require "stringent review" prior to becoming effective to assure they are just, reasonable and not unreasonably discriminatory, whereas for some reason the filings of nondominant carriers do not. The Commission provides no support for this, and BellSouth submits that there is no rationale for this dichotomy where competitive services are

¹¹ Order, para. 24.

involved. Indeed, the Commission instead should base its rules, not upon a given carrier's status as dominant or nondominant, but rather upon the competitive or noncompetitive nature of the service at issue. Where the service involved is a competitive one, then the "stringent review" referred to will not be needed as the marketplace (as well as the availability of complaint procedures and the Commission's ability to initiate its own investigations, as referred to above) will provide whatever safeguards may be viewed as needed to assure just, reasonable and not unreasonably discriminatory tariff filings.

In summary, BellSouth supports the easing of tariff filing requirements. A determination of the applicability of such streamlined requirements should be made not based upon the status of each individual carrier, but rather based upon the status of the service involved. Where a service is

competitive, streamlined tariff filing requirements should
apply to all carriers competing to provide that service
regardless of their status.

Respectfully submitted,

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